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In the Supreme Court of the United States.

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No. 16, Original, October Term, 1927.

THE STATE OF COLORADO, *Complainant*,

vs.

THE STATE OF KANSAS and THE FINNEY COUNTY WATER USERS' ASSOCIATION, a Corporation, *Defendants*.

MOTION TO DISMISS THE BILL OF COMPLAINT IN EQUITY AND THE CASE.

WILLIAM A. SMITH,
Attorney-general of the State of Kansas,
JOHN G. EGAN,
Asst. Attorney-general of the State of Kansas,
CHESTER I. LONG,
Solicitors for the State of Kansas.

F. DUMONT SMITH,
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Solicitors for the Finney County Water Users' Association, a Corporation.

12-2227

In the Supreme Court
of the United States.

No. 15, Original, October Term, 1927.

THE STATE OF COLORADO, *Complainant*,

vs.

THE STATE OF KANSAS and THE FINNEY COUNTY WATER USERS' ASSOCIATION, a Corporation, *Defendants*.

MOTION TO DISMISS THE BILL OF COMPLAINT IN EQUITY AND THE CASE.

Come now the State of Kansas and The Finney County Water Users' Association, a corporation, organized and existing under the laws of the state of Kansas, which are named as defendants in the foregoing entitled case, and each severally moves the court to dismiss the bill of complaint in equity filed by the complainant in said case, the State of Colorado, for want of jurisdiction of this court over the bill of complaint and case, and for want of equity apparent on the face of the bill of complaint and, as detailed grounds of this motion, state:

I.

The claims asserted in the case, referred to in paragraph twelfth of said bill of complaint in equity, which was brought by the United States Irrigating Company, a corporation of Kansas, as complainant, against the Graham Ditch Company and others, as defendants, were for priority of rights in the appropriation of water flowing in

the Arkansas river in Kansas, as against claims of appropriation of water by the defendants, flowing in the Arkansas river, or its tributaries, in Colorado.

II.

The claims asserted in the case, referred to in paragraph twelfth of said bill of complaint in equity, which was brought by The Finney County Water Users' Association, a corporation, as complainant, against The Graham Ditch Company and others, as defendants, are for priority of rights in the appropriation of water flowing in the Arkansas river in Kansas, as against claims of appropriation of water by the defendants, flowing in the Arkansas river, or its tributaries, in Colorado.

III.

The decision and judgment of the Supreme Court of the United States in the case of *Kansas v. Colorado*, the opinions in which were reported in volume 185, United States Reports, page 125, and in volume 206, United States Reports, page 46, referred to in paragraphs seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, seventeenth, nineteenth, twentieth and in the prayer of said bill of complaint, did not pass upon any claims or rights of priorities to the appropriation of water from the Arkansas river, or its tributaries, as between the United States Irrigating Company, a corporation of Kansas, or the Finney County Water Users' Association, a corporation, on the one side, and any municipality, resident, or citizen of Colorado, on the other side, or as between any municipality, citizen or resident of Kansas, on the one side, and any municipality, citizen, or resident of Colorado, on the other side.

IV.

The bill of complaint does not make any definite or specific allegation that any municipality, citizen or resident of Kansas threatens to or will bring any suit against any municipality, citizen or resident of Colorado, to present any question of priorities of claims or rights to the appropriation of water from the Arkansas river in Kansas and said river, or its tributaries, in Colorado, or to obtain any decree or judgment against any defendant on account of the taking of water by him or it from said river, or its tributaries, in Colorado.

V.

The bill of complaint does not allege that the State of Kansas has threatened to bring any suit against the State of Colorado, or against any municipality, citizen, or resident of Colorado, involving any claim of rights to priorities in appropriation of water flowing in the Arkansas river, or its tributaries, as between any municipality, citizen or resident of Kansas, on the one side, and any municipality, citizen, or resident of Colorado, on the other side, or to obtain any decree or judgment against any defendant on account of the taking of water by him or it from said river, or its tributaries, in Colorado.

VI.

The bill does not make a party thereto any municipality, citizen, or resident of Colorado, or any municipality, citizen, or resident of Kansas, which would or might be affected by any decree in this case, other than The Finney County Water Users' Association.

VII.

The State of Colorado has no right to maintain this suit in order to litigate and have determined, or prevent the litigation or determination of, any question of priority of claims or rights to appropria-

tion of water from the Arkansas river in Kansas, or said river and its tributaries in Colorado, as between The Finney County Water Users' Association, a corporation of Kansas, or any municipality, citizen or resident of Kansas, on the one side, and any municipality, citizen or resident of Colorado, on the other side.

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